

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

DEWEY A. ROWLAND,

Plaintiff,

v.

U.S. DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMPENSATION
PROGRAMS

Defendant.

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) Case No. _____
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COMPLAINT

Dewey A. Rowland, by counsel, files this Complaint against Defendant the U.S. Department of Labor, Office of Workers' Compensation Programs ("OWCP"), and in support thereof states as follows:

1. Plaintiff, Dewey A. Rowland, is a citizen and resident of Bedford County, Virginia.

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. §552(a)(4)(B).

3. Venue is proper in this Court also pursuant to 5 U.S.C. §552(a)(4)(B).

4. Plaintiff Rowland is the defendant in an Appomattox Circuit Court matter, Delores Garrett, as Executor of the Estate of Teddy Wayne Garrett, deceased v. Dewey Anderson Rowland, CL12-140, arising from a motor vehicle accident of June 2, 2010. At the time of the accident, the

Circuit-Court plaintiff's decedant was acting within the course and scope of his employment with the Forestry Service.

5. By letter of December 4, 2012, plaintiff Rowland made a Freedom of Information Act/ Privacy Act request of the OWCP, asking for copies of Mr. Garrett's records. To this request was attached an authorization signed by the executor of Mr. Garrett's estate.

6. By its letter of March 19, 2013 (attached hereto as "Exhibit A"), the OWCP acknowledged, and acceded to, plaintiff Rowland's request.

7. No documents have been forthcoming, and plaintiff's counsel has been unable to reach the OWCP despite repeated telephone calls.

8. Since the OWCP has agreed to answer the plaintiff's request, it has made no "adverse determination" which the plaintiff might oppose in an administrative appeal. The plaintiff has therefore effectively exhausted his administrative remedies.

9. The OWCP moreover did not determine whether it would answer the plaintiff's FOIA request until March 19, 2013, long after the 20 day period prescribed by 5 U.S.C. §552(a)(6)(A)(i). For this reason alone, following §552(a)(6)(C)(i), the plaintiff should be "deemed to have exhausted his administrative remedies."

WHEREFORE, plaintiff asks this Court to compel the defendant to answer his FOIA request, and, pursuant to Rule 5 U.S.C. §552(a)(4)(E), for

an amount representing the reasonable expenses incurred in pursuing this motion including, but not limited to, attorney fees.

Respectfully Submitted,

DEWEY A. ROWLAND

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